/61 cont./

613 One may weigh the interest of these investigations of civil
128 status, if I may venture to say it, bearing on each ikhs, its origin, its character. Their most immediate result, one will see some examples of this below, is to reveal an extreme complexity in groups presenting themselves today as units.

/62/ b) Familial archives...

212 A second source, no less rich and more propitious for the
613 usual methods of erudition, is offered by the family archives. This society is enamored of the written word. It is indeed rare
[415] if each one does not save old papers, put in a "goatskin," tawulkt, or more rarely in a chest. They are rolled in volumen. One slips them into a cylindrical box made from a piece of reed. In this dry climate, preservation is almost indefinite. Still rare for the dates before the beginning of the sixteenth century, these documents become more and more frequent starting from this epoch. The great families preserve them by the thousands.
[691] Merely their inventory, drawn up at the time of legal disputes between heirs, sometimes occupies several pages. Inexhaustible contribution to research, for which they reserve the most unhoped-for windfalls. To be sure, it is protected by its difficulties of access and of deciphering. These illegible scrawls are jealously kept from the gaze of others, a fortiori from the outsider and the administrator, for they conceal, if not powers, at least an intimacy that one wants to safeguard against any hold
[195] over one. Worn and often faded writing, drawn up in a notarial language studded with barbarisms and idioms, their utilization generally requires the help of scholars of the country, alone capable of interpreting them.

Be that as it may, they constitute an inestimable source on the juridical, hence economic and social life of these olden times. From generation to generation, one can follow there the same names of ikhs and thus cross-check the traditional structure of the group. Beyond these verifications of civil status, they allow retracing quite surely the estate formation of the valley lands during the last two centuries at least. One can draw from

241 /126 cont./

Only the quarter has a personality, in the toponymy as in the landscape. But it is not united by appropriation, unless one sets it up as a "collective field," which one could not do without [423] abusing the expression. The parcels that are discerned there indeed arise from a molecular ownership, if I may venture to say it. But they hardly have any topographical existence. They are only crumbs of patrimony.

Divisions and Organs of the Field

241 423 Quite abstract as it may be, this fractioning plays its role. But its strength is not tied to a material demarcation, to the consistency of an area. It is connected rather to a verbal affinity. Such and such parcels, dispersed within the ground, are reputed to be the legitimate portion of such and such a family. [691] This qualification is their only defense. There is nothing more striking at the time of legal disputes over boundaries. What is affirmed in the procedure is not the concrete value of a limit, it [171] is, so to speak, the autonomy of a cell. Quite a difference from the Mediterranean type of the fundus. These parcels are defined less by a spatially determined cadre than by the fitting in of one having rights among others having rights. Aided by the modicity of the areas, the identification of each is not local, but onomastic. The names subdivide a quarter, which is itself a division of [634] the ground. Similarly the taqbilt is divided into subgroups, which are subdivided into families. Toponymy and anthroponymy are thus combined to form, with the help of other factors, a diversified and tiered system which is defined by the hold of verbal classifications on pieces of country, by the association of names with pieces of ground.

Let us grip more closely the identity of this patrimonial cell that the parcel represents. In general, it is a minuscule quadrilateral inserted among a multitude of others and defined by this very insertion. Its area is of a modicity that is astounding.

/163 cont./

241 441 237 (675) of mercantile economy. The case is all the more striking because, in the old rural order, a number of things are removed from commerce: milk, for example, which is never sold, and straw, which is carelessly left on the fields. But the animal manure not only forms the tacit counterpart of the pacts of transhumance or of common pasturage, but can even give rise to ciphered dealings.

[692] These particularities appear in full light in an arbitral decision of the fqih Belwâh', of the Bas /Lower/ Demsira, a magistrate whose montagnard appurtenances (he was born in the wild valley of the a. Mh'nd u Musa, which the Bwibaun separates from our a. Lh'sen) render very revealing judgments of the view of a milieu intent on compromising between the law and the ancestral custom.

691 692 237 427 It is a matter of litigation between a sâkin, "a precarious resident," and the master of the house, who suddenly asks him for a rent of equivalence. The other one retorts by demanding the price of the manure of his beasts. The fqih, by dint of citations from ᶜAmal, came to establish that the first demand was unjustified, and the second one justified. He knowingly refers to the rural custom, which does not recognize rents for this kind of installation: without doubt (and although this is unavowed) because such pacts depend upon the clientele and thus contain a deep antinomy with the contractual law. On the other hand, it is not at all the same for animal manure: this is a commodity, which comes to the owner of the animals and, on the other hand, cannot enter in as a gracious counterpart of hospitality.

237 24 [171] Such a case in point gives a measure of the importance that fertilizer assumes in this system. The great suppleness, if I may venture to say it, of the European peasant economy, to wit, the correlation between livestock breeding and cultivation, is thus found again here, evident and calculable. The accumulation of [342] the manure in the stable, agrur, often arranged on the ground floor of the house, its handling, and its being placed in piles before the tillage of autumn and spring, its dispersion on the field: so many practices to which the high-valley cultivator devotes

[Imt'ddan]
[Bulᶜwân]

613 621 /211/ Undoubtedly one observes a certain differentiation between Tinwalin and Tamezgurt, on one hand, the two other villages of the tetrapolis, Tagunit and Tamt'ddit, on the other. But, with this exception, each subgroup is well represented in the different grounds of the canton.

423 691 This characteristic appeared clearly on the occasion of proceedings which in 1951 set the Imt'ddan against one another concerning a vast albur utilized half-pasturage, half-tillage, on the E. counterfort of the Tamjlucht. A judiciary transfer was made at the summit of the Azuran. The titles were contradictory; leases, sales had come into play. And, even more, irregularities of an ownership which always accrued to the strongest, but without annulling the right of the weakest. In fact, within this ground, three families, profiting from their preponderance, disputed a quarter favorable for rye called Uz'z'igat (1,900 meters). The summit is not far from it. From there, the view plunges, to the E., over the Kattos, the Wafagga; to the W. and to the S., over a landscape with magnificent folds, closed by the barrier of the Afuzar and, in the background, by the Atlasic crest. This high plateau, all around the crop terrain, is studded with idughas, [692] "summer shelters." The jemâa deliberates. An agreement is [634] finally concluded. The Uz'z'igat is to be allotted among the 19 [613] ikhs-s resulting from the fractioning of the first Imt'ddan families. A brief dispute had tended to exclude the branches with the most [634] eccentric habitat, such as those of Tinwalin. But, instructively, the taqbilt solidarity and the landed-property vocation that it implies will outweigh the dispersion of habitat and the decay of the bond. It could not be otherwise. Analogous solidarity prevails elsewhere, as has been seen, in a matter as favorable to privative appropriation as the harvest of almonds.

G) Bulᶜwân, estuary of the montagnard system

133 361 The Tagoyyamt ford (740 meters), where the traditional route from the Dir crosses the Oued Seksawa, here called Lwâd n-Qihra, or Asifl-lqîhra, leaves a village on the right, Bulᶜwân, the colony of which, Taqennurt, situated not far away, on the

[Demsira]

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1) At Timezgadiwin, an important market between the Tizi Umachcho and Argana, the law is so present that it could serve corollarially in a judiciary investigation in the proceedings setting against the present jemâa the claim of a formerly evicted ikhs, the a. Umahal. This ikhs's turn for water and its share in all the quarters of the ground: Tassukt, Ikid'ulh'yan, Igummeranan, Igg n-zzit n-Belâid, Ddu wknari, Tigumrin, Bukheddo, Talat, had been camouflaged by the four other ikhs-s making up the a. Timezgadiwin, but three quarters of a century of occupation did not succeed in abolishing them. Thus there were always 5 turns for water for 4 ikhs-s, no plausible explanation being alleged for such an anomaly. That in a matter which in such a milieu is always reasoned out very exactly. An error in the administration of the water: the investigation thrust itself in there and unmasked the usurpation.

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2) At Tinnmrutin, high-mountain village of the a. Châib, endowed with a relatively large ground, there exist 7 ikhs-s. The irrigated land is divided into 12 quarters perpendicular to the axis of the torrent: Ddu wrtan, Amkid'an, Ddu murgun, Igg mgun, Imi n-takt, Tikssrt, Imin-tsektan, Nggi teghla, Ddu teghla, Ughlin, Ddu wgenza, Imi n-tdkki. As a general rule, each quarter divided among all the ikhs-s. Nevertheless inequalities of appurtenance, going from the simple to the quadruple, are observed within each quarter, between the shares of the ones having rights. They are still greater in the quarter located immediately below the village. Just as in another one, one of the 7 ikhs-s is not represented. The irrigation is done by turns of one day, falling to each of the ikhs-s. On the dry land, similar representation, although with more ample proportions and in less entanglement. Above the ditches for streaming water, that is again accentuated, and each ikhs has a sector of its own at its disposal.

The example of Tinnmrutin is all the more interesting because it touches our Seksawa, from whom the Iguntar, today attached to the a. Lh'sen, descended and still possess rights there.

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3) In the most tortured region of the Demsira, the most weakened by all the conquerors, official passers-by, claimants

/227 cont./

121 about the type of appropriation of land that, in the majority of
[423] the examples known, corresponds to the tree and water techniques: that is, the privative form. Such a singularity should not be set aside a priori, any more than a likewise persistent reminder of primitive communitarian modalities. Nevertheless, bearing in mind the willing climate of this life, the effort, systematic and localizable at a certain moment in the past, which the construction of the grounds often expresses, one also evokes
[613] conscious divisions among subjects of law. The occupation and improvement of the soil conquered or created at all points over the wasteland, the forest, the slope have been able to bring as a corollary their balanced distribution among participants: these subgroups, called ikhs-s, and which would be united among themselves by connections of a type complicated in a manner other than consanguinity. It is also possible that this plural equilibrium expresses a readjustment of the group, its reaction against an external threat or internal decadence.

Order of work or social reform, this type of division is presented to us at a recent epoch. It reflects a spirit at the same time ratiocinating and communitarian, altruistic and responsible, of which this inquiry will observe the constant manifestation. Thus it is that the Idma, having recovered their Tasselli territory
• [691] from the a. H'adduyws, redistributed it. At Tabratjut, the old order was re-established, but not without alterations, at the close of a litigation with wild perturbations. Other examples might be cited. They abound in the daily jurisprudence of the jemâa-s.

What we have called "the parcellary orchestration" could thus arise from a stage of origin or more modern arrangements. Ethnological hypothesis or historical hypothesis: let us not choose between the two for the moment.

The Coefficient of Breadth

103 The humanity of the high valleys invests in its tiny domain enormous expenditures of energy: work, organization, and also denominations. Because the concentration of the toponymy there

/240 cont./

184 This immediate datum is thrust upon the observer as on the users. In addition, for the analysis, it will be the best of the bases of departure.

Admittedly, difficulty begins almost at once. For if one indeed sees the basic unity, contrasting with the vehemence of the personalities that stand out from it, the investigation fails to press the contrast harder. For example, we do not know the Gedmiwa, a group of antiquity as venerable as the Seksawa, well enough for the comparison between the two to go beyond the plane of simple description. It is not yet possible to define seriously the culture of this Moroccan South-West, which asserts itself by characters as tangible as the speech or the very figure of the inhabitant. It is not yet possible to state precisely or to explain how, out of this homogeneity, particularisms /241/ sufficiently lively for their exchanges to be ordered in relations of extemal law are articulated.

131 Here between the Lemgo, the Kattos, and the Atlasic arête
[133] is a mountainous quadrilateral some thirty kilometers on a side as the crow flies. At least four juridical identities are crowded there: Nfifa, Demsira, Dwiran, and Seksawa. And each one in turn is subdivided.

619 The consistency of the amerwas, "matrimonial gift," the
[585] effective force of coswearers imposed according to the gravity of
[691] a litigation go from simple to double if the litigants do not be-
[695] long to the same unit. Today the unit is the "tribe": Seksawa, Dwiran, etc. But this can also be, more authentically, what we
619 call the "fraction," that is, the taqbilt. And there are seven or
634 eight of them merely in Seksawa. Thus, in Demsira, the rate of
585 the amerwas varies according to four zones which apply the regime of exteriority to one another. In the case of a girl given
[184] to a Mtuggi, the chchard', stipulated marriage-settlement for the benefit of the bride, includes in certain taqbilt-s, and not in
619 others, the obligation for landed property. In land matters,
634 extracantonal testimony is not secured. Avowed reason: because
691 the foreigner could not be well informed. But, obviously, it is
[186] because the group prizes its juridical integrity. Between different
[184]

/264 cont./

423 pointed out in the Maghreb for a long time. In all this there is
627 an ensemble of closely related ideas which surrounds by its total
578 context our oath of boundaries. I might add that this last is of
[171] absolutely universal usage in Morocco, "Arab countries" included, and that it seems to have the characteristics of the most ancient institutional base.

423 On this level, we are fully in the atmosphere of "sworn law."
627 The "oath" acts naturally here as a very ancient mode of creation of the law. It is it that preserves the veritable ordered dustiness that, in the ancient equilibrium of the grounds, the infinite multiplicity of the patrimonial representation typifies. That is indeed a remarkable thing, and one that can give an idea of the most archaic bases of this agrarian life.

Other Juridical Gestures

000 The Seksawa system further knows a certain number of courses expressing the same genre of attitudes with decisive value.

586 A repudiated wife does not accept the marriage settlement
691 and the acquests that the husband has handed over to her. She makes a bundle of them and, in spite of the resistance of the chorus, justly disturbed, she "projects" it "to the heart of the jemâa." Consequently she is considered free of the consequences which the apprehension of the objects would have implied for her and which would have meant replevin for her. Quite the contrary, she henceforth poses as claimant, as suppliant. The jemâa feels obliged to intervene for her. As most often happens in similar cases, it is in a reconciliation -- that is, in juridical language, in a transaction -- that the scandal will end. The frequency of
691 this genre of denouements in the oldest atmosphere of the Maghrebi law, and this was on the occasion of litigations brought before the cadi, has struck all the observers. Paradox, one might think, in a society so contentious! But it is more instructive to see here the victorious rise of an old juridical base running through the modern proceedings. There would be the key to this procedural anomaly.

42 /266/ /The following paragraph is in small type in the original source./ "Let it be known to him who, if God wishes, would stop here, O family and doctors of the Mussulmans, the a. Waẑziz of Alus make public and decry, raising their plaint up to the throne of Misericord, that the a. H'sayn..., that they make istirᶜâ' against them on the parcels... [The indication of a long conflict follows] ... They have nothing here, and their usufruct is but usurpation. The a. Waẑziz complain before the people of the Tamgonsi, large and small, men and women, free and slave..."

42 What counts here is not the "reserve" that a more evolved right would stipulate, bringing into play some theory of the vice of consent. It is the imprecatory value of the attitude. The solemnity of the expression has been noted. This cry causes "the throne of God" to shake, which recalls the very image of an old Greek formula. Doubtlessly, one addresses oneself to God and blasts an injustice. But the religious and moral coloration certainly does not go back to the most ancient base. One conjectures this base from the various gestures (1)

1. In a neighboring domain, the Gedmiwa, some of these gestures are described in an in. /unpublished/ study by Lepage, Le droit coutumier des Gedmiwa /The customary law of the Gedmiwa/.

by which the reaction of the victim is expressed still today.

This is first of all an interjection, âwqâwq. It rejects tendentious allegations, draws attention to bad faith, and appeals against the powerful. In graver cases of oppression, characterized by a continuous state, the weak one has at his disposal a crescendo of means: to carry a candle end, lqandil, to the court of the judge, to wander through the villages, the head smeared with the soot coming from the breaking of a pot or covered with a mat; to proclaim, to make public, berrh', in the markets that one is the victim of so and so. Beyond that there is emigration, a frequent

/289 cont./

794 The fund coming from all these contributions is subjected among foqra to egalitarian division. They put it together with the product of the offerings, oboles, etc., collected all during the year in the box, rrbi^{c}t, placed in the zaouia, under the name of tisura, plural of tasarut, literally: "keys," analogous to the Arabic futûh'ât. This benefice is defined by those interested as a lh'obûs, "pious foundation." The analogy is only a rough one. 794 Violent competitions between rightful claimants, on one hand, 578 between moqaddem and other beneficiaries, on the other /290/ hand, between men and women also often arise and necessitate the intervention of justice. One of these conflicts broke out in [691] 1949 and had to be settled by the assembly of all the Seksawa, [692] constituted as a supreme court, as parties interested in the highest degree by the questions touching upon their saint. An initial de- 794 duction of one tenth was set apart for widows and daughters in a state of need, the rest forming the object of an egalitarian division among all the foyers, with the reserve of a preference share for the moqaddem.

The Legend

773 The largest part of the revenues come at the great moments [794] of collective tension of the two annual feasts. But before even [796] describing these two feasts, and first from the outside, before any [128] interpretation, as it is time to become acquainted with the legend, I shall give below the account of it that was collected about forty years ago, with an exactitude not suspected of sociological ambition, by the French naturalist Brives, the memory of whom still survives in the valley because he was "the friend" of Lalla Aziza (1).

1. Brives, Voyages au Maroc /Travels in Morocco/, 1909, pp. 256 sq.

We are on the terrace of a house which faces, from the other side of a ravine, that of the saint. All the terraces blaze out

792 /313 cont./
[534] example) the talent of a tambourin player. He is an assistant greatly in demand for all the choruses and dances in this part of the mountains.

Around him a legion of cousins agitates, avid for their part of the benefice and not falling back before the cunning or /314/
[794] violent competition. Beyond the "portable" offering that comes at the time of the tighersiwin, or at the time of the payment of particular cens, there are contingent ones, or those "paid on application," which so-and-so of the rightful claimants goes to seek, taking his chances, from tribe to tribe. This quest is not exclusive of either harsh disputes or sometimes of trickery. Such
[791] an agurram carries off the share of the legitimate devolutionary. That ends in proceedings under the compliant eye of the temporal chiefs or of the jemâa.

No particular dignity, no hypocrisy characterize these com-
[778] portments. Titularies by inheritance of a parcel of the "benefic emanation," or baraka, and, correlatively, of a portion of the cens or fees owed the saint, his descendants exploit it with a naïve impudence, in which the good people are not far from recognizing a trait of this simplicity in the passions which is so compatible with the profession of the sacred.

Like the igʷrramen of Assttif, and even more than them, those of Ammern help in understanding the peculiarity of life resulting from a "maraboutic" origin. No moral judgment, no notion of merit is mixed with their prestige. They can be quarrelsome, greedy, or debauched, like any of their neighbors. Less absorption in field work, a diet with more meat, resulting from so many sacrificial offerings, a physical selection testifying to more experience, and more taste, in the choice of wines, differentiate them physically from the profane. Also more freedom in their ways, due to the traditional fiscal exemptions, tawqîr, and to fewer inhibitions. The agurram is one who lives
[778] fully. Nature is allowed to speak in him, even in the form of the most unbridled of appetites, or of incoherence, for this nature is itself bearer of baraka. One seeks in it a sort of

/322 cont./

792 [776] Sibâ^{c}î is a saint whose memory survives at the zaouia of Takerkuzt (1).

1. Today submerged by the waters of the dam of the Nffis.

to the S. of Marrakech, from where this volume comes. This mu^{c}âchara that the exaltation of a young soul solicits is the initiatory commerce.

128 Let us thereupon terminate the study of religious structures, the outline of which would have remained inexact if, besides their connections to the rural group, one had not also mentioned what they let pass in sallies beyond this group. All that we can say now no longer concerns the Seksawa, not even the Chleuhs /Shluh/ as such. Let us give the floor to E. Dermenghem, explorer touched by Maghrebi holiness.

/323/

A Juridical System

I. Techniques of Settlement

Let us go back some thirty years, that is, before the institution of the present Tribunaux Coutumiers /Customary Courts/. That is little for a historical investigation. It is sufficient, nevertheless, to reveal a triple order of phenomena, corresponding to three layers of the social reality, as well as to three kinds of techniques.

691 [692] Let us first set aside the more or less important litigations in which the authority, jemâa, amghar, or moqaddem, arrogates to itself the decision. The expansion of personal power is limited here by a very strict tradition concerning the devolutions of competence. As will be seen, it is above all a question of matters concerning the public order, that is, bringing into play the internal structure of the group or its combination with neighboring groups. A second category of litigations, the most common ones in a rural society, is under the jurisdiction of sworn law. We

691 695

/323 cont./

691 have studied it above. It aims at re-establishing a distributive
695 integrity among riparian patrimonies, thus bringing into play an agrarian order on whose exact nature it has been necessary to reserve judgment.

423 Finally there are the conflicts of personal or landed-property
691 order. The procedure — it is indeed then a matter of procedure — is in two parts. The temporal authority, made cognizant first, brings about and records the agreement of the parties in the person of a muh'akim, most often a religious or scholarly individual. Who is this personage exactly?

Judgment or Arbitration?

623 The judiciary attributions in Chleuh /Shluh/ country are en-
634 trusted today to a collegial Tribunal. This is an extension of the
619 former competence of the jemâa, which customarily dealt with
692 only public law and the first phase of the judiciary instance properly speaking. But this extension doubtlessly is not exorbitant of a lively communitarian tradition, which is explained by the fact that, in contrast to the feudal forms observed on the plain, it impressed the reformer.

/324/ On the other hand, and on the historical plane, nothing permits affirming that in a number of epochs this extension of
[629] competence was not produced spontaneously. The demarcation between the natures of the public law and of the private law is tenuous since most of the landed-property litigations arise from conflicts between groups or subdivisions of groups, which is also the theme of the public life of the canton. Some written traces of settlements of this sort authorize the hypothesis.

/The following two paragraphs are in small type in the original source./ An act of 982 Heg.: 1572, concerning the well-known gens of the a. D'alh'a and some persons from Tawanghast, mentions that one of those interested "produced, in the bosom of the jemâa, the act of guarantee of his mother's dower," kharraja ᶜala wasat'i'l-jamâᶜa. In this affair, obviously of private law,

/327 cont./

695 121 manner of acting in a doctoral and formal style, the very one of an eminent justice.

Two Procedural Forces: The Writing...

212 691 695 The classic Arabic verb istaz'hara, "to produce, to manifest the proofs of a law," is very often employed in the Seksawa archives, apropos landed-property litigations. In spite of its reassuring pedantry, I am not sure that it is not necessary to compare it with the practice that consists of reading the acts that the parties oppose on the spot of the litigation (qerri afella, "to produce against...," or factitive saghra, saqra, "to have read"). And perhaps even, at a more ancient stage, the act was purely and simply deposited upon the contested land. Hypothesis? The characteristics of efficacity not at all /328/ intellectual and mediate ("elements of proof"), but direct and concrete that the use of these titles offers naturally lead to this sort of hypothesis.

An immense red-tape flora, timidly rising from the end of the fifteenth century, already more fecund in the sixteenth century, subsequently spreads with more and more luxuriance. The Seksawa mountain is a conservatory of charters (1).

1. Cf. Et. in. /unpublished Study/ by B. de La Forcade, "Les actes en pays de coutume /Acts in countries of custom/," CHEAM, applying especially to the region of Igherm.

It happens that these old acts themselves make mention of the days of privation that a chest or leather bottle cost scholars for those salaried on the occasion of a trial. In 1193 Heg.: 1779, the a. Març, on the occasion of litigation, inventoried their acts. Cost: 5 mûzûnas-s in salary to the fqih, who had spent four days of work there! ... In general, the paper is thick and narrow, of heavy grain, and veritable cardboard in certain cases. Difficult decipherment, in view of the incorrectness of the language, both

[175] [465] [794] 212 695

/355 cont./

423 /The following three paragraphs are in small type in the original source./ Some a. Gasa titles were shown in 1948 on the occasion of a dispute bearing on lands situated between Z'init' and Jjgit. They came in support of a claim which did not hesitate to attack an occupation of at least a century and a half.

An act of 1234 Heg.: 1819 records an agreement among the a. H'adduyws on the subject of some property of the a. H'ogg^{w}a. The jemâa proclaimed the unopposability of the habous to which the a. H'ogg^{w}a were pleading an exception in order to break up the landed-property alienations and leasings, even those consented to on the part of women, to which a conqueror referred. Such a deliberation, which implies the existence of numerous and argued litigations, attests to the fact that the a. H'ogg^{w}a, although pursued by war and in fact dispossessed, are always regarded as the origin of all landed-property rights, and that it is necessary to go back to them by regular purchases in order to justify a possession. The fact of eliminating the difficulty originating from habous in no way limits this preoccupation with origins; on the contrary, it confirms it, since it is only by purchases that the habous can be opposed. One thus sought to purchase.

A third example is offered by a document of 1310 Heg.: 1894. A few years earlier the same a. H'adduyws had won the ground of Tasselli from the Idma. By ransom or counterattack the Idma recovered it. But certain ikhs-s were false, being on the side of the adversary. Their goods were then divided into portions awarded to the members of the coalition. This trait would seem to be in opposition to preceding ones. It is so only in appearance. The owner's legitimacy, if it resists eviction, may disappear because of certain errors solemnly attested to. A marabout of Assttif presided over the exclusion of the traitors. This is a sort of ostracism. Neither spoliation nor even civil sanction. The group, by an intense manifestation of its internal tension, re-established in their purity the bonds that attach it to its soil.

/355 cont./

175 423 691 This new element will have made the analysis progress. It results from written testimony, and by no means from hypotheses more or less subject to caution. It reveals, in the comings and goings of the man, due to the difficulties of the times, a constancy that attaches it to a ground, and is not without aspects of a magico-religious order. This bond can survive the most violent vicissitudes. On the condition, undoubtedly, that the name survives. [103] The primacy and the extreme conservation /356/ of toponyms in this part of the Atlas are perhaps the reason that this persistent legitimacy can be observed here to a degree unequaled, it seems, in the rest of North Africa.

The last of these acts also supplies an important element. It is seen here that the equilibrium between the group and the ground may undergo modifications because of the intervention of the group. [613] Consequently who knows if the patrimonial representation of the ikhs-s in the quarters does not reflect deliberate initiatives and, in short, measures of application of the first law?

425 However that may be, permanence and agitations of the landed life are fashioned according to figures that it will not be from an overly systematic logic to call tied between them. Now [436] the instrument of the exchanges here is money: that which is amassed on the spot and that which is fetched from the outside. This is the double aspect of a monetarism that forms the unity among the so-called contradictory, and at the very least contrasting, aspects of the milieu. How these different economic or moral factors are ordered is what we are now going to try to elucidate.

Patrimonial Legitimacy Versus Possession

428 And first of all the notion of patrimony exists in this society. The law, like the mores, expressly refers to it. This is the ddment [192] (1).

1. From the Arabic ad-dimna, plur. diman, "place smoked by the proximity of the

/365 cont./

794 428 634 /footnote 1 continued/ on the one side, a. Tunert, I. i-yzimmer, Irohalen; on the other, Ichkajjen, a. Dris.

against which the Seksawa are directly backed (a. Tunert, I. i-yzimmer, Irohalen), it is the totality of goods that is obligatorily "haboused": hence inalienability and disinheritance of women extending to the ensemble of the ground. Elsewhere it is a matter of a simple faculty, but so laid under contribution in the mountains of Imintanout that at the same period the proportion of habous was evaluated at two fifths of the tillable land. Twenty-five years ago the judiciary jemâa of the Demsîra even expressed the wish that one half of all contested landed-property should be considered habous. This practice has not been retained. But it prevails in [671] Haut /Upper/ Gedmiwa under the name of ṭaûqît (2).

2. But nothing may be concluded with certainty, the customary law of the Aghbar seeming to have undergone recent evolutions of an administrative order that have accentuated its imprecision. It appears to us today, much more than the Seksawa law, to be a "patoisant" /speaking with a provincial accent/ law, whether this character be ancient or acquired.

794 428 On the other hand, scarcely any habous in Bas /Lower/ Seksawa, downstream from the confluence of the asif n-a. Lh'sen. A [691] foundation of the protégé of Brives, Ah'med ou Bihi, at Tuz'z'umt, was regarded as an anomaly and gave rise to a long lawsuit: it is true that the wife of the founder was a foreigner from the Mtugga. [177] Even lower, in the plain, permeable to outside influences, this form concerns, as in Arab countries, only a minority of "great families." It doubtlessly then finds the alibi of its pious intention. On the contrary, it is so frequent in the mountains that it is presumed of all land. But the customary judge opposes to this

/388 cont./

671 of the person: shares of benefice of a saint, tisura (trans. of the
675 Arabic futūh'āt), of the right to mutual assistance, tiwizi, of
421 "protection," etc. There one /389/ is at the very antipode of
182 what one imagines of an "ancient" law.

What is to be said about this division of labor that not only
671 qualifies, in the landed-property procedure, judges outside the
182 group, but jealously denies competence to the temporal chief?
[692] These careful delimitations, although undoubtedly from the most authentic foundation of the Chleuh /Shluh/ society, appear irreducible to archaism. Nevertheless the splitting of the judiciary instance obeys exigencies of recourse to the outside, of pause in the course of the joust, and, in short, of rejection of responsibility by the group, which express obscure traditional sentiments. This gives rise nonetheless to a procedure of scholarly type, written and aspiring to cityness. Traits undeniably "advanced": condemnation by default that the codifications anticipate, fine for nonexecution of the sentence or for failure to answer a summons, this last motif recurring constantly.

681 The penal law, up to a very recent period, has been admin-
182 istered by the jemāa. The latter has never really given it up. It
[634] is even for this purpose that it deploys the most initiatives and most willingly exercises its legislative function. But let us note that this penal law, based on pecuniary composition, a composition duly tariffed, evinces a singular institutional maturity. While the gentilitial structure inspires the agrarian order, it is effaced, in the penal one, before something that is clearly of the public law, and felt as such.

695 The plural oath has retained its role. It concludes all liti-
182 gations that the writing does not determine. But this restriction is
[691] already quite important. And moreover, even where it keeps all its value, the oath has been driven into a reduced position: no longer of sworn law -- but of a second element of a procedure begun on an intellectual and profane plane. The richness of the elements of magico-religious order that one finds here and there in this part of the system cannot efface the contrary aspects, which are also striking. Certainly it is possible to suppose that

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

as the *'adat* or *'urf*, the distinction between these two words being somewhat confused. Customary law is consulted in all civil cases (such as disputes regarding terrain, water rights, inheritance, etc.), and in minor criminal matters – the customary law having been replaced by a French-sponsored penal code in most aspects of criminal law since the establishment of the Protectorate. This customary law is established and revised by the local representative councils of each region; it may be administered either by them or by a designated arbiter (*annezzarfou*), this arbiter being required to have a great knowledge of the local law, and to be an intelligent and experienced man highly regarded by all. If possible, he should be a stranger to the group involved, or else divorced from its mundane affairs by virtue of being a holy man (Johns Hopkins University, 1956, pp. 231-232; Loubignac, 1942, p. 281).

The most important aspects of the *azrif* are water rights and (formerly) penal crimes such as theft, abduction of women, adultery, wounds, blows, and murder. Water rights are still carefully regulated by the *'urf* or customary law of each group. Among the Beni Uriaguel (99), for example, the *qanuns* or edicts of customary law dealing with irrigation carefully take into account the nature of flow in different rivers. Thus, on the Lower Rhis, in the Plain of Alhucemas, where the flow is constant but not altogether sufficient, the *qanuns* state that any man who purchases land must buy his irrigation turn independently. In the case of the Nekor River which is extremely erratic, the *qanuns* provide that the purchaser of land is automatically entitled to irrigation water, because most of the year there is sufficient quantity for all. Throughout the Berber areas litigation regarding water rights is kept at a minimum through the existence of water administrators (known as *amazzal*, pl. *imazzalen*, among the Shluh) who distribute the irrigation water in accordance with the recognized rights (Hart, 1954, pp. 56-57).

In its application to criminal acts the Berber *azrif* was characterized by great dependence upon oaths and upon the imposition of fines. This first feature (oaths) was the principal reason for the Berber court usually meeting in a mosque or at a market with an associated shrine, for in all cases the litigants swear by something to give efficacy to their oaths, and this is generally something which has